

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NOS. 2747 & 2047

103RD GENERAL ASSEMBLY

4181H.05P

JOSEPH ENGLER, Chief Clerk

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## AN ACT

To repeal section 565.030, RSMo, and to enact in lieu thereof five new sections relating to proceedings resulting from criminal conduct.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 565.030, RSMo, is repealed and five new sections enacted in lieu thereof, to be known as sections 476.411, 565.030, 610.141, 610.143, and 610.144, to read as follows:

**476.411. Beginning January 1, 2031, and each year thereafter, the office of state courts administrator and the Missouri state highway patrol shall submit a report to the joint committee on the justice system, the house judiciary committee or any successor committee, and the senate judiciary and civil and criminal jurisprudence committee or any successor committee providing statistical information for the prior year, arranged by judicial circuit and county, of:**

**(1) The number of clean slate eligible offenses as defined under section 610.141 identified by the Missouri state highway patrol under subsection 2 of section 610.141 and transmitted to the courts;**

**(2) The number of identified clean slate eligible offenses to which a prosecuting attorney filed an objection under subsection 3 of section 610.141; and**

**(3) The number of orders of expungement issued under section 610.141.**

**The data shall be aggregated by race, sex, age, circuit, county, and offense type and level if such data is available.**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

565.030. 1. Where murder in the first degree is charged but not submitted or where the state waives the death penalty, the submission to the trier and all subsequent proceedings in the case shall proceed as in all other criminal cases.

2. Where murder in the first degree is submitted to the trier without a waiver of the death penalty, the trial shall proceed in two stages before the same trier. At the first stage the trier shall decide only whether the defendant is guilty or not guilty of any submitted offense. The issue of punishment shall not be submitted to the trier at the first stage. If an offense is charged other than murder in the first degree in a count together with a count of murder in the first degree, the trial judge shall assess punishment on any such offense according to law, after the defendant is found guilty of such offense and after he finds the defendant to be a prior offender pursuant to chapter 558.

3. If murder in the first degree is submitted and the death penalty was not waived but the trier finds the defendant guilty of a lesser homicide, a second stage of the trial shall proceed as in all other criminal cases. The attorneys may then argue as in other criminal cases the issue of punishment, after which the trier shall assess and declare the punishment as in all other criminal cases.

4. If the trier at the first stage of a trial where the death penalty was not waived finds the defendant guilty of murder in the first degree, a second stage of the trial shall proceed at which the only issue shall be the punishment to be assessed and declared. Evidence in aggravation and mitigation of punishment, including but not limited to evidence supporting any of the aggravating or mitigating circumstances listed in subsection 2 or 3 of section 565.032, may be presented subject to the rules of evidence at criminal trials. Such evidence may include, within the discretion of the court, evidence concerning the murder victim and the impact of the offense upon the family of the victim and others. Rebuttal and surrebuttal evidence may be presented. The state shall be the first to proceed. If the trier is a jury it shall be instructed on the law. The attorneys may then argue the issue of punishment to the jury, and the state shall have the right to open and close the argument. The trier shall assess and declare the punishment at life imprisonment without eligibility for probation, parole, or release except by act of the governor:

(1) If the trier finds by a preponderance of the evidence that the defendant is intellectually disabled; or

(2) If the trier does not find beyond a reasonable doubt at least one of the statutory aggravating circumstances set out in subsection 2 of section 565.032; or

(3) If the trier ~~[concludes that there is evidence in mitigation of punishment, including but not limited to evidence supporting the statutory mitigating circumstances listed in subsection 3 of section 565.032, which is sufficient to outweigh the evidence in aggravation of punishment found by the trier]~~ **does not determine by unanimous vote that the**

38 **aggravating circumstance or circumstances previously found outweigh the mitigating**  
39 **circumstance or circumstances including, but not limited to, those mitigating**  
40 **circumstances set out in subsection 3 of section 565.032; or**

41 (4) If the trier decides under all of the circumstances not to assess and declare the  
42 punishment at death. If the trier is a jury it shall be so instructed.

43

44 If the trier assesses and declares the punishment at death it shall, in its findings or verdict, set  
45 out in writing the aggravating circumstance or circumstances listed in subsection 2 of section  
46 565.032 which it found beyond a reasonable doubt. If the trier is a jury it shall be instructed  
47 before the case is submitted that if it is unable to decide or agree upon the punishment the  
48 court shall assess and declare the punishment at life imprisonment without eligibility for  
49 probation, parole, or release except by act of the governor ~~[or death. The court shall follow~~  
50 ~~the same procedure as set out in this section whenever it is required to determine punishment~~  
51 ~~for murder in the first degree].~~

52 5. Upon written agreement of the parties and with leave of the court, the issue of the  
53 defendant's intellectual disability may be taken up by the court and decided prior to trial  
54 without prejudicing the defendant's right to have the issue submitted to the trier of fact as  
55 provided in subsection 4 of this section.

56 6. As used in this section, the terms "intellectual disability" or "intellectually  
57 disabled" refer to a condition involving substantial limitations in general functioning  
58 characterized by significantly subaverage intellectual functioning with continual extensive  
59 related deficits and limitations in two or more adaptive behaviors such as communication,  
60 self-care, home living, social skills, community use, self-direction, health and safety,  
61 functional academics, leisure and work, which conditions are manifested and documented  
62 before eighteen years of age.

63 7. The provisions of this section shall only govern offenses committed on or after  
64 August 28, 2001.

**610.141. 1. As used in this section, section 476.411, and sections 610.143 and**  
2 **610.144, unless the context otherwise indicates, the following terms mean:**

3 **(1) "Automated expungement", technology-assisted, state-initiated bulk closing**  
4 **of records in the manner established under section 610.120;**

5 **(2) "Automated expungement technology", any information technology**  
6 **equipment, software, systems, or services associated with automated expungement;**

7 **(3) "Automated expungement technology implementation date", the date on**  
8 **which moneys are appropriated for an automated system or software designed to**  
9 **identify, review, and process clean slate eligible offense records maintained by the**

10 Missouri state highway patrol for expungement or sealing without requiring manual  
11 initiation or oversight or July 1, 2029, whichever occurs later;

12 (4) "Central repository", the Missouri state highway patrol central repository  
13 for compiling and disseminating complete and accurate criminal history records;

14 (5) "Clean slate eligible offense", a misdemeanor or felony not listed under  
15 subsection 3 of section 610.140 for which an electronic record exists in the central  
16 repository;

17 (6) "Close" or "closed", to make records inaccessible to the general public and  
18 to all individuals other than the defendant, except as provided under section 610.120  
19 and chapter 43;

20 (7) "Expunge" or "expunged", to close an electronic record in the manner  
21 established under section 610.120, except the provisions of subsection 2 of section  
22 610.120 that require documents to be retyped and rewritten, or blacked out and  
23 recopied, if an agency determines that these provisions are not feasible in relation to  
24 automated expungement;

25 (8) "Final disposition", the date the person has completed his or her  
26 incarceration, probation, or parole. In the event that the Missouri state highway  
27 patrol cannot determine a final disposition based on data contained in the statewide  
28 court automation system and the central repository, the Missouri state highway patrol  
29 may use the date a person's imposed sentence would end, or, if the Missouri state  
30 highway patrol cannot determine an imposed sentence, it may assume a person received  
31 a maximum sentence and use the end date of such a sentence as the date of final  
32 disposition;

33 (9) "Petitioner", a person who has petitioned the court to have his or her  
34 conviction or convictions expunged or a person whose conviction or convictions have  
35 been automatically expunged under this section.

36 2. (1) Subject to the provisions in subsection 3 of this section, all electronic  
37 records and files maintained in the central repository pertaining to clean slate eligible  
38 offenses shall be closed in the manner established under section 610.120 without the  
39 filing of a petition under section 610.140 in the following cases, subject to the limitations  
40 contained in subdivisions (2), (3), and (4) of this subsection:

41 (a) For misdemeanors, if one year has passed since final disposition and the  
42 individual has not been convicted of any felony or misdemeanor criminal offense in  
43 Missouri during that time;

44 (b) For felony offenses, if three years have passed since final disposition and the  
45 individual has not been convicted of any felony or misdemeanor criminal offense in  
46 Missouri during that time;

47           (c) For all of an individual's offenses, if the individual has attained sixty-five  
48 years of age and has not been convicted of any misdemeanors or felonies in Missouri  
49 other than a technical violation of the terms of his or her probation or parole in the ten  
50 immediately preceding years; or

51           (d) All offenses for which the governor of Missouri has granted a full pardon.

52           (2) Records pertaining to juvenile adjudications are not eligible for automated  
53 expungement.

54           (3) Records pertaining to any arrest, prosecution, or conviction of an offense  
55 under chapters 301, 302, 303, 304, and 307 are not eligible for automated expungement.

56           (4) No offense shall be eligible for automated expungement if a person has  
57 charges pending that have been filed in a Missouri state court for which an individual  
58 has not yet been sentenced during the period of review for clean slate eligibility as  
59 described in subsection 3 of this section.

60           (5) (a) An individual may be granted more than one expungement under this  
61 section, except that during his or her lifetime the total number of offenses for which  
62 expungement can be granted to the individual under this section or section 610.140 shall  
63 not exceed the following limits:

64           a. No more than two felony offenses; and

65           b. No more than three misdemeanor offenses.

66           (b) If an individual's electronic record contains more felonies or misdemeanors  
67 than can be expunged during the individual's lifetime under paragraph (a) of this  
68 subdivision, the individual shall not be eligible for automated expungement under this  
69 section.

70           (c) For purposes of determining lifetime limits on expungement under this  
71 section:

72           a. If the offenses were charged as counts in the same case, all such offenses and  
73 violations shall count as only the highest-level offense in that case for purposes of  
74 determining lifetime limits on expungement under this section. However, if one or more  
75 counts in the same indictment or information or conduct committed were a part of the  
76 same course of criminal conduct as an offense listed in subsection 3 of section 610.140,  
77 the entire record shall not be expunged under this section;

78           b. If the offenses were committed by an individual who has attained sixty-five  
79 years of age and has not been convicted of any misdemeanors or felonies in the  
80 immediate ten preceding years in Missouri, all clean slate eligible offenses shall be  
81 expunged; and

82           c. Only convictions contained within the central repository shall be considered  
83 when determining eligibility under this section.

84           **(d) The Missouri state highway patrol shall maintain records to ensure that a**  
85 **person has not exceeded the limitations provided under this subsection. Nothing in this**  
86 **section shall be construed to limit or impair the subsequent use of any record expunged**  
87 **under this section for the purpose of any law enforcement or prosecutorial investigation**  
88 **or activity, including any arrest or findings of guilt expunged under this section by a law**  
89 **enforcement agency, criminal justice agency, prosecuting attorney, circuit attorney, or**  
90 **municipal prosecuting attorney, including its use as a prior offense in a subsequent**  
91 **criminal or civil investigation or prosecution.**

92           **3. (1) Six months after the automated expungement technology implementation**  
93 **date, and on a quarterly basis thereafter, the Missouri state highway patrol shall identify**  
94 **records that have become eligible in the last quarter and transmit, or otherwise make**  
95 **accessible by electronic means, to every prosecuting agency in the state all clean slate**  
96 **eligible offense records within one hundred days of the record becoming eligible for**  
97 **automated expungement.**

98           **(2) Prior to six months after the automated expungement technology**  
99 **implementation date, the Missouri state highway patrol shall identify records that**  
100 **would have been eligible for automated expungement under subsection 2 of this section.**  
101 **Within twelve months after the automated expungement technology implementation**  
102 **date, all such records shall be identified and expunged in the manner and according to**  
103 **the time frames provided under this subsection. The order of such records to be**  
104 **expunged shall be determined by the Missouri state highway patrol and the office of**  
105 **state courts administrator.**

106           **(3) Delinquent court costs, fines, fees, or other sums ordered by a court, except**  
107 **restitution owed to a victim of a crime, shall not be considered by the court, prosecuting**  
108 **agency, or central repository when determining eligibility of a record for automated**  
109 **expungement under subsection 2 of this section. However, the office of state courts**  
110 **administrator may seek a setoff of any income tax refund and lottery prize payouts**  
111 **under section 488.5028 for all delinquent court costs, fines, fees, or other sums ordered**  
112 **by a court relating to convictions expunged under subsection 2 of this section.**

113           **(4) Each prosecuting agency in this state has no more than sixty days from the**  
114 **day on which the notice described in subdivision (1) of this subsection is transmitted, or**  
115 **otherwise made accessible by electronic means, to object to an automated expungement**  
116 **and transmit such objection to the central repository. The prosecuting agency may**  
117 **object to the automated expungement for any of the following reasons:**

118           **(a) After reviewing the prosecuting agency's record, the record does not meet the**  
119 **definition of a clean slate eligible offense;**

120           **(b) The person has not paid court-ordered restitution to the victim;**

121 (c) The person has charges pending against them in another case in Missouri; or

122 (d) The prosecuting agency can furnish documentation that the person has  
123 felony or misdemeanor charges pending against him or her in another state or has been  
124 convicted of a felony or a misdemeanor in another state during the waiting periods  
125 established under subdivision (1) of subsection 2 of this section.

126 (5) If a prosecuting agency objects for a reason described in subdivision (4) of  
127 this subsection, within sixty days of the day on which the notice described in subdivision  
128 (1) of this subsection is transmitted, or otherwise made accessible by electronic means,  
129 the record shall not be expunged.

130 (6) If sixty days have passed without an objection from a prosecuting agency for  
131 one of the reasons set forth under this subsection, the Missouri state highway patrol  
132 shall transmit, or otherwise make accessible by electronic means, within fifteen days all  
133 the records to be expunged to the office of state courts administrator for distribution to  
134 the circuit courts.

135 (7) Within fifteen days of receiving all records to be expunged from the Missouri  
136 highway patrol, the office of state courts administrator shall transmit, or otherwise  
137 make accessible by electronic means, copies of all records to be expunged to the circuit  
138 court.

139 (8) Within thirty days of receiving a notice to expunge, the circuit court shall  
140 enter an order of expungement in the case record associated with the clean slate eligible  
141 offense being expunged.

142 (9) On a quarterly basis, each circuit court shall transmit, or otherwise make  
143 accessible by electronic means, copies of all orders for expungement that the court issues  
144 under this section to the office of state courts administrator.

145 (10) Within thirty days of the order of expungement being entered and a copy  
146 being transmitted to the office of state courts administrator, the office of state courts  
147 administrator shall provide notice of the order of expungement to the prosecuting or  
148 circuit attorneys, the department of corrections, and the Missouri state highway patrol.  
149 The Missouri state highway patrol shall notify law enforcement agencies. Each entity  
150 possessing records subject to the order shall close such records in the manner  
151 established under section 610.120. The records shall be confidential from the date of  
152 expungement and shall be made available only to the individuals or entities and for the  
153 purposes set forth in subdivision (11) of this subsection.

154 (11) (a) The Missouri state highway patrol shall retain a nonpublic record of the  
155 order expunging a conviction or other notification regarding a conviction that was  
156 automatically expunged under this section and of the record of the arrest, fingerprints,  
157 conviction, and sentence of the person in the case to which the order or other

158 notification applies. The nonpublic record shall be made available only to a court of  
159 competent jurisdiction, the state public defender system, the department of corrections,  
160 a law enforcement agency, a prosecuting attorney, the attorney general, the department  
161 of revenue, or the governor upon request and only for the following purposes:

162 a. To show that a person who has filed a petition to expunge a conviction has  
163 previously had a conviction expunged under this section;

164 b. The court's consideration in determining the sentence to be imposed upon  
165 conviction for a subsequent offense that is punishable as a felony or by imprisonment  
166 for more than one year;

167 c. Consideration by the governor if a person whose conviction has been  
168 expunged applies for a pardon for another offense;

169 d. Consideration by the department of corrections or a law enforcement agency  
170 if a person whose conviction has been expunged applies for employment with the  
171 department of corrections or a law enforcement agency;

172 e. Consideration by a court, law enforcement agency, prosecuting attorney, or  
173 the attorney general in determining whether a person required to register under  
174 sections 589.400 to 589.425 has committed an offense that requires registration under  
175 sections 589.400 to 589.425, or in prosecuting a person for committing an offense  
176 requiring registration under sections 589.400 to 589.425;

177 f. Consideration by a court, law enforcement agency, prosecuting attorney, or  
178 the attorney general for use in making determinations regarding charges, plea offers,  
179 and sentencing, as applicable; or

180 g. Consideration by any entity responsible for issuing commercial driver's  
181 licenses for the purpose of meeting state and federal requirements to obtain commercial  
182 driver's licenses.

183 (b) A copy of the nonpublic record created under paragraph (a) of this  
184 subdivision may be provided upon request to the person whose conviction is expunged  
185 under this section upon payment of a fee determined and charged by the Missouri state  
186 highway patrol.

187 (c) The nonpublic record maintained under paragraph (a) of this subdivision is  
188 exempt from disclosure under this chapter.

189 (d) An entity shall not be liable for damages or subject to criminal penalties for  
190 reporting a public record of conviction that has been expunged by court order or  
191 operation of law prior to six months after the automated expungement technology  
192 implementation date if that record was available as a public record on the date of the  
193 report.

194 (e) The Missouri state highway patrol shall provide a consumer reporting agency  
195 with information sufficient to accurately identify and delete records associated with the  
196 clean slate eligible offense being expunged.

197 4. Any court sentencing an individual for a clean slate eligible offense shall  
198 provide the individual a document outlining the state's clean slate expungement  
199 program at the time of sentencing.

200 5. Any probation or parole office releasing an individual from supervision for a  
201 clean slate eligible offense shall provide the individual a document outlining the state's  
202 clean slate expungement program at the time of release.

203 6. The provisions of this section shall apply retroactively to any arrest, charge,  
204 trial, or conviction for which there is an electronic record regardless of the date that the  
205 arrest was made, the charge or charges were brought, the trial occurred, or the  
206 conviction was entered.

207 7. Nothing in this section precludes an individual from filing a petition for  
208 expungement of records under section 610.140 if an individual is eligible for automated  
209 expungement under this section but such automated expungement has not yet occurred  
210 or cannot occur.

211 8. If it is determined that a conviction was improperly or erroneously expunged  
212 under this section because the conviction was not eligible to be expunged under this  
213 section, the court shall, on its own motion, reinstate the conviction.

214 9. (1) Upon the entry of an order under section 610.140, or upon the automated  
215 expungement of a conviction under this section, the petitioner, for purposes of the law, is  
216 considered not to have been previously convicted, except as provided under this  
217 subsection and subsection 10 of section 610.140.

218 (2) The petitioner shall not be entitled to the remission of any fine, costs, or other  
219 moneys paid as a consequence of a conviction that is expunged.

220 (3) This section shall not affect the right of the petitioner to rely upon the  
221 conviction to bar subsequent proceedings for the same offense.

222 (4) This section shall not affect the right of a victim of an offense to bring or  
223 defend a civil action for damages.

224 (5) This section shall not create a right to commence an action for damages for  
225 incarceration under the sentence that the petitioner served before the conviction is  
226 expunged under this section.

227 (6) This section shall not relieve any obligation to pay restitution owed to the  
228 victim of an offense nor shall such section affect the jurisdiction of the convicting court  
229 or the authority of any court order with regard to enforcing an order for restitution.

230           **(7) A conviction, including any records relating to the conviction and any**  
231 **records concerning a collateral action, that has been expunged under this section shall**  
232 **not be used as evidence in an action for negligent hiring, admission, or licensure against**  
233 **any person.**

234           **(8) A conviction that is expunged under this section or section 610.140 may be**  
235 **considered a prior conviction by a court, law enforcement agency, prosecuting attorney,**  
236 **or the attorney general, as applicable, for purposes of charging a crime as a second or**  
237 **subsequent offense or for sentencing under section 558.016.**

238           **10. The office of state courts administrator shall collaborate with the Missouri**  
239 **state highway patrol to establish and implement data-sharing procedures regarding the**  
240 **information required under this section.**

241           **11. Any person eligible for expungement under this section who has filed a**  
242 **petition for expungement under section 610.140 shall be granted an expungement,**  
243 **subject to subsection 3 of this section.**

**610.143. 1. A credit bureau may report records of arrests, indictments pending**  
2 **trial, and convictions of crimes for no longer than seven years from final disposition.**  
3 **Records of arrests, indictments pending trial, and convictions of crimes shall no longer**  
4 **be reported if at any time after a conviction it is learned that a full pardon or**  
5 **expungement has been granted for that conviction, or at any time after an arrest or**  
6 **indictment it is learned that a conviction did not result.**

7           **2. Any credit bureau or user of information that willfully fails to comply with**  
8 **any requirement of this section with respect to any consumer is liable to that consumer**  
9 **in an amount equal to:**

- 10           **(1) Any actual damages sustained by the consumer as a result of the failure;**  
11           **(2) Punitive damages as the court may allow; and**  
12           **(3) In the case of any successful action under this section, costs of the action and**  
13 **reasonable attorney's fees as determined by the court.**

14           **3. Any credit bureau or user of information that is negligent in failing to comply**  
15 **with any requirement of this section with respect to any consumer is liable to that**  
16 **consumer in an amount equal to:**

- 17           **(1) Any actual damages sustained by the consumer as a result of the failure; and**  
18           **(2) In the case of any successful action under this section, costs of the action and**  
19 **reasonable attorney's fees as determined by the court.**

20           **4. Injunctive relief shall be available to any consumer aggrieved by a violation or**  
21 **a threatened violation of this section regardless of whether the consumer seeks any other**  
22 **remedy under this section.**

23           **5. An employer, volunteer organization, or landlord who employs, qualifies, or**  
24 **otherwise engages an individual whose criminal history record has been expunged shall**  
25 **be immune from liability for any claim arising out of the misconduct of the individual if**  
26 **the misconduct relates to the portion of the criminal history record that has been**  
27 **expunged.**

28           **6. A person granted an expungement shall disclose any expunged offense if the**  
29 **disclosure of such information is necessary to complete any application for employment**  
30 **with any:**

31           **(1) Federally insured bank or savings institution or credit union or an affiliate of**  
32 **such institution or credit union for the purpose of compliance with 12 U.S.C. Section**  
33 **1829 and 12 U.S.C. Section 1785; or**

34           **(2) Entity engaged in the business of insurance or any insurer for the purpose of**  
35 **complying with 18 U.S.C. Section 1033, 18 U.S.C. Section 1034, or other similar law that**  
36 **requires an employer engaged in the business of insurance to exclude applicants with**  
37 **certain criminal convictions from employment.**

**610.144. 1. (1) There is hereby created in the state treasury the "Missouri**  
2 **Expungement Fund", which shall consist of moneys appropriated to it by the general**  
3 **assembly and gifts, donations, grants, and bequests. The state treasurer shall be**  
4 **custodian of the fund. In accordance with sections 30.170 and 30.180, the state treasurer**  
5 **may approve disbursements. The fund shall be a dedicated fund and, upon**  
6 **appropriation, moneys in this fund shall be used solely as provided in subsection 2 of**  
7 **this section.**

8           **(2) The state treasurer shall invest moneys in the fund in the same manner as**  
9 **other funds are invested. Any interest and moneys earned on such investments shall be**  
10 **credited to the fund.**

11           **2. The office of state courts administrator, the department of public safety, and**  
12 **the information technology services division within the office of administration shall**  
13 **expend moneys from the fund, upon appropriation, on the statewide court automation**  
14 **case management system and the Missouri criminal history record information system**  
15 **established under sections 43.500 to 43.530 for one or more of the following purposes:**

16           **(1) Expenses that may be incurred to develop, establish, maintain, or operate**  
17 **any information technology equipment, software, systems, or services associated with**  
18 **the expungement or closing of records under Missouri law, including the development**  
19 **and implementation of any technology-assisted, state-initiated bulk expungement or**  
20 **sealing of records under Missouri law; or**

21           **(2) The cost of necessary personnel or contractors.**

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